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14 **UNITED STATES DISTRICT COURT**
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16 **EASTERN DISTRICT OF CALIFORNIA**

17 CLAUDIA RAMIREZ, ESMERALDA
18 LIZBETH MENDEZ LOZANO, LILIAN
19 CABRERA, ANA ROSA MENDOZA,
20 ALICIA FERNANDEZ DULCE NIETO,
21 ROSA HERNANDEZ, individually, and
22 on behalf of other members of the general
23 public similarly situated,

24 Plaintiffs,

25 v.

26 CORNERSTONE BUILDING
27 BRANDS, an unknown business entity;
28 PLY GEM WINDOWS, an unknown
business entity; PLY GEM PACIFIC
WINDOWS CORPORATION, an
unknown business entity; PLY GEM
RESIDENTIAL SOLUTIONS, an
unknown business entity; SIMONTON
DOORS & WINDOWS, an unknown
business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No. 2:21-cv-01017-MCE-JDP
(Consolidated Case)

**JOINT STIPULATION AND ORDER
FOR LEAVE TO FILE PLAINTIFFS'
FIRST AMENDED CONSOLIDATED
CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

Judge: Hon. Morrison C. England, Jr.
Courtroom 7, 14th Floor

Complaint Filed: April 12, 2021
Removal Filed: June 08, 2021

1 NATHANIEL WILLIAMS and LAJUAN
2 DENNIS, individuals, on behalf of
themselves and on behalf of all persons
similarly situated;

3 Plaintiffs,

4 vs.

5 PLY GEM PACIFIC WINDOWS
6 CORPORATION, a California
7 Corporation; and DOES 1 through 50,
8 inclusive,

9 Defendants.

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1 Plaintiffs ESMERALDA LIZBETH MENDEZ LOZANO, LILIAN CABRERA,
2 ANA ROSA MENDOZA, ALICIA FERNANDEZ, DULCE NIETO, ROSA
3 HERNANDEZ, and NATHANIEL WILLIAMS (“Plaintiffs”) and Defendants
4 CORNERSTONE BUILDING BRANDS, INC. PLY GEM PACIFIC WINDOWS
5 CORPORATION, and SIMONTON WINDOWS & DOORS, INC.¹ (“Defendants”)
6 (collectively, “Parties”) by and through their counsel of record, hereby stipulate as follows:

7 WHEREAS, on April 12, 2021, Plaintiffs CLAUDIA RAMIREZ, ESMERALDA
8 LIZBETH MENDEZ LOZANO, LILIAN CABRERA, ANA ROSA MENDOZA,
9 ALICIA FERNANDEZ, DULCE NIETO, and ROSA HERNANDEZ filed a Class Action
10 Complaint in the Superior Court for the State of California in and for the County of
11 Sacramento, Case No. 34-2021-00298527 (the “Ramirez Class Action”);

12 WHEREAS, on June 15, 2021, Plaintiffs CLAUDIA RAMIREZ, ESMERALDA
13 LIZBETH MENDEZ LOZANO, LILIAN CABRERA, ANA ROSA MENDOZA,
14 ALICIA FERNANDEZ, DULCE NIETO, and ROSA HERNANDEZ filed a separate
15 Representative Action Complaint pursuant to the Private Attorneys General Act of 2004
16 in the Superior Court for the State of California in and for the County of Sacramento, Case
17 No. 34-2021-00302310 (the “Ramirez PAGA Action”);

18 WHEREAS, on October 13, 2021, Plaintiffs NATHANIEL WILLIAMS and
19 LAJUAN DENNIS filed a Class Action Complaint in the Superior Court for the State of
20 California in and for the County of Sacramento, Case No. 34-2021-00309657 (the
21 “Williams Class Action”);

22 WHEREAS, on December 13, 2021, Plaintiffs NATHANIEL WILLIAMS and
23 LAJUAN DENNIS filed a separate Representative Action Complaint pursuant to the
24 Private Attorneys General Act of 2004 in the Superior Court for the State of California in
25 and for the County of Sacramento, Case No. 34-2021-003128601 (the “Williams PAGA
26 Action”);

27
28 ¹ The other two named defendants, Ply Gem Windows and Ply Gem Residential
Solutions, are non-existent entities that have never appeared in this action.

1 WHEREAS, on June 8, 2021, Defendants removed the Ramirez Class Action to the
2 United States District Court for the Eastern District Of California, Case No. 2:21-cv-
3 01017-MCE-JDP (Dkt. 1);

4 WHEREAS, on January 5, 2022, Defendants removed the Williams Class Action
5 to the United States District Court for the Eastern District Of California, Case No. Case
6 2:22-cv-00038-MCE-JDP;

7 WHEREAS, on April 20, 2022, pursuant to the Parties' stipulation, the Court issued
8 an Order Consolidating the Ramirez Class Action and the Williams Class Action, with the
9 first-filed Ramirez Class Action designated as the "master file" (Dkt. 21);

10 WHEREAS, on March 3, 2022, the Parties participated in an all-day mediation with
11 mediator Deborah Saxe, Esq., which did not result in a resolution of the matter;

12 WHEREAS, the Parties continued to litigate the matter;

13 WHEREAS, on February 2, 2023, the Parties attended another partial-day
14 mediation with Ms. Saxe, which resulted in a global settlement of the Ramirez Class
15 Action, Williams Class Action, Ramirez PAGA Action, and the Williams PAGA Action
16 shortly thereafter;

17 WHEREAS, the parties have fully executed a "Term Sheet" (i.e., Memorandum of
18 Understanding) as to the essential terms of the settlement and are working together to
19 finalize their long-form agreement and the settlement approval papers;

20 WHEREAS, on March 29, 2023, the Court dismissed without prejudice the claims
21 of Plaintiffs Ramirez and Dennis, and they are no longer plaintiffs in the matter (Dkt. 50);

22 WHEREAS, pursuant to the Parties' "Term Sheet" and for purposes of settlement
23 approval and administration the Parties agree that Plaintiffs may file a First Amended
24 Consolidated Class and Representative Action Complaint to include all the causes of
25 action and parties in the Ramirez Class Action, Ramirez PAGA Action, Williams Class
26 Action, and Williams PAGA Action, so that Plaintiffs can collectively seek approval of
27 the global settlement before this Court;

1 WHEREAS, to accomplish the forgoing, Plaintiffs seek to file a First Amended
2 Consolidated Class and Representative Action Complaint (“FAC”), a copy of which is
3 attached hereto as Exhibit #1;

4 WHEREAS, Defendants consent to allow Plaintiffs to file the proposed FAC
5 attached hereto as Exhibit #1 for the limited purpose of proceeding with and obtaining
6 Court approval of the settlement;

7 WHEREAS, the Parties agree that, in the event that any material provision of the
8 settlement is not substantially approved by this Court or the settlement is otherwise
9 terminated, canceled, declared void, fails to become effective in accordance with its terms,
10 or if any judgment of the Court approving of the Parties’ settlement does not become final,
11 the filing of the FAC shall become void *ab initio*, the FAC will be stricken from the
12 Court’s docket, and the matter will proceed under the prior pleadings as if the FAC had
13 never been filed;

14 WHEREAS, the Parties have presented this stipulation and the proposed FAC to
15 the Court in advance of the Motion for Preliminary Approval, which the Parties anticipate
16 will be filed by May 31, 2024 (Dkt. 53).

17 WHEREAS, the Parties agree that Defendants are not required to file a responsive
18 pleading to the FAC.

19 THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT:

20 Upon the Court’s execution of this Order,

21 1. Plaintiffs are granted leave to file the First Amended Consolidated Class and
22 Representative Action Complaint (“FAC”), a copy of which is attached as Exhibit #1;

23 2. In the event that any material provision of the settlement is not substantially
24 approved by this Court or the settlement is otherwise terminated, canceled, declared void,
25 fails to become effective in accordance with its terms, or if any judgment of the Court
26 approving of the Parties’ settlement does not become final, the filing of the FAC shall
27 become void *ab initio*, the FAC will be stricken from the Court’s docket, and the matter
28 will proceed under the prior pleadings as if the FAC had never been filed

1 3. Plaintiffs shall file the FAC within fourteen (14) days of notice of entry of
2 the Court's Order granting this stipulation; and

3 4. Defendants are not required to file a responsive pleading to the FAC.

4 **IT IS SO STIPULATED.**

5 DATED: May 29, 2024

Respectfully submitted,

6 BLUMENTHAL NORDREHAUG
7 BHOWMIK DE BLOUW LLP

8 By: /s/ Jeffrey S. Herman
9 Jeffrey S. Herman
10 Attorneys for Plaintiffs

11 DATED: May 29, 2024

MUNGER, TOLLES & OLSON LLP

12 By: /s/ David W. Moreshead
13 David W. Moreshead
14 Attorneys for Defendants

15 LAWYERS for JUSTICE, PC

16 DATED: May 29, 2024

17 By: /s/ Brian J. St. John
18 Brian J. St. John
19 Attorneys for Plaintiffs

SIGNATURE ATTESTATION

20 *Pursuant to Local Rule 5-4.3.4(a)(2), the filer attests that all other signatories listed,
21 and on whose behalf the filing is submitted, concur in the filing's content and have
22 authorized the filing.

ORDER

The Court has reviewed the Parties' Joint Stipulation For Leave to File Plaintiffs' First Amended Consolidated Class and Representative Action Complaint.

Good cause appearing therefore, it is hereby ordered that the Parties' Stipulation is
GRANTED:

1. The provisions of the Parties' Stipulation are incorporated into this Order;
2. The Parties' Stipulation to Leave to File Plaintiffs' First Amended Consolidated Class and Representative Action Complaint ("FAC") is **GRANTED**.
3. Plaintiffs shall have leave to file their FAC within fourteen (14) days from the notice of entry of this order; and
4. Defendants are not required to file a responsive pleading to the FAC.

IT IS SO ORDERED.

Dated: May 29, 2024


MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE

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EXHIBIT 1

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5 *Attorneys for Plaintiffs*
[Additional Counsel on the Following Page]

6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**

8 ESMERALDA LIZBETH MENDEZ LOZANO,
9 LILIAN CABRERA, ANA ROSA MENDOZA,
ALICIA FERNANDEZ, DULCE NIETO, ROSA
10 HERNANDEZ, NATHANIEL WILLIAMS
individually, and on behalf of other members of
the general public similarly situated

11 Plaintiffs,
12 vs.
13

14 CORNERSTONE BUILDING BRANDS, INC.;
PLY GEM PACIFIC WINDOWS
15 CORPORATION, SIMONTON WINDOWS &
DOORS, INC.; and DOES 1 through 100,
inclusive,

16 Defendants.

17 **Case No.: 2:21-cv-01017-MCE-JDP**

18 **FIRST AMENDED CONSOLIDATED CLASS**
AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES

19 (1) Violation of California Labor Code §§
510 and 1198 (Unpaid Overtime);
20 (2) Violation of California Labor Code §§
226.7 and 512(a) (Unpaid Meal Period
Premiums);
21 (3) Violation of California Labor Code §
226.7 (Unpaid Rest Period
Premiums);
22 (4) Violation of California Labor Code §§
1194, 1197, and 1197.1 (Unpaid
Minimum Wages);
23 (5) Violation of California Labor Code §§
201, 202, and 203 (Final Wages Not
Timely Paid);
24 (6) Violation of California Labor Code §
204 (Wages Not Timely Paid During
Employment);
25 (7) Violation of California Labor Code §
226(a) (Non-Compliant Wage
Statements);
26 (8) Violation of California Labor Code §
1174(d) (Failure To Keep Requisite
Payroll Records);
27 (9) Violation of California Labor Code §§
2800 and 2802 (Unreimbursed
Business Expenses);
28 (10) Failure to Issue Wages by
Instrumental Payable on Demand
Without Discount in Violation of Cal.
Lab. Code § 212;
(11) Violation of California Business &
Professions Code §§ 17200, et seq;
and
(12) Violation of California Labor Code §
2698, et seq. (California Labor Code
Private Attorneys General Act of

1 2004).
2 **DEMAND FOR JURY TRIAL**
3
4

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17 Attorneys for Plaintiff

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4 COME NOW, Plaintiffs ESMERALDA LIZBETH MENDEZ LOZANO (“Plaintiff
5 LOZANO”), LILIAN CABRERA (“Plaintiff CABRERA”), ANA ROSA MENDOZA (“Plaintiff
6 MENDOZA”), ALICIA FERNANDEZ (“Plaintiff FERNANDEZ”), DULCE NIETO (“Plaintiff
7 NIETO”), ROSA HERNANDEZ (“Plaintiff HERNANDEZ”), NATHANIEL WILLIAMS ((“Plaintiff
8 WILLIAMS”) and collectively with Plaintiffs LOZANO, CABRERA, MENDOZA, FERNANDEZ,
9 HERNANDEZ, and NIETO as “Plaintiffs”), individually, and on behalf of other members of the
10 general public similarly situated, and alleges as follows:

11 **JURISDICTION AND VENUE**

12 1. This class action is brought pursuant to the California Code of Civil Procedure section 382.
13 The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. The “amount in controversy” for the
15 named Plaintiffs, including but not limited to claims for compensatory damages, restitution, penalties,
16 wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars
17 (\$75,000).

18 2. This Court has jurisdiction over this action pursuant to the California Constitution, Article
19 VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those
20 given by statute to other courts. The statutes under which this action is brought do not specify any other
21 basis for jurisdiction.

22 3. This Court has jurisdiction over Defendants because, upon information and belief,
23 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
24 intentionally avail themselves of the California market so as to render the exercise of jurisdiction over
25 them by California courts consistent with traditional notions of fair play and substantial justice.

26 4. Venue is proper in this Court because, upon information and belief, Defendants maintain
27 offices, have agents, employs individuals, and/or transact business in the State of California, County of
28 Sacramento.

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PARTIES

5. Plaintiff ESMERALDA LIZBETH MENDEZ LOZANO is an individual residing in the State of California.

6. Plaintiff **LILIAN CABRERA** is an individual residing in the State of California.

7. Plaintiff ANA ROSA MENDOZA is an individual residing in the State of California.

8. Plaintiff ALICIA FERNANDEZ is an individual residing in the State of California.

9. Plaintiff DULCE NIETO is an individual residing in the State of California.

10. Plaintiff ROSA HERNANDEZ is an individual residing in the State of California.

11. Plaintiff NATHANIEL WILLIAMS is an individual residing in the State of California.

12. Defendant CORNERSTONE BUILDING BRANDS, INC. at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Sacramento.

13. Defendant PLY GEM PACIFIC WINDOWS CORPORATION, at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Sacramento.

14. Defendant SIMONTON WINDOWS & DOORS, INC. at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Sacramento.

15. At all relevant times, Defendants, CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS CORPORATION, and SIMONTON WINDOWS & DOORS, INC. were the “employer” of Plaintiffs within the meaning of all applicable California laws and statutes

16. At all times herein relevant, Defendants CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or

1 assigns, each of the other, and at all times relevant hereto were acting within the course and scope of
2 their authority as such agents, partners, joint venturers, joint employers, representatives, servants,
3 employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were
4 duly committed with the ratification, knowledge, permission, encouragement, authorization and/or
5 consent of each defendant designated as a DOE herein.

6 17. The true names and capacities, whether corporate, associate, individual or
7 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said
8 defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information
9 and belief allege, that each of the defendants designated as a DOE is legally responsible for the events
10 and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to
11 Plaintiffs and the other class members as alleged in this Complaint. Plaintiffs will seek leave of court
12 to amend this Complaint to show the true names and capacities when the same have been ascertained.

13 18. Defendants CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC
14 WINDOWS CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100
15 will hereinafter collectively be referred to as "Defendants."

16 19. Plaintiffs further allege that Defendants directly or indirectly controlled or affected the
17 working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other
18 class members so as to make each of said Defendants employers liable under the statutory provisions
19 set forth herein.

20 **CLASS ACTION ALLEGATIONS**

21 20. Plaintiffs bring this action on their own behalf and on behalf of all other members of
22 the general public similarly situated, and, thus, seek class certification under California Code of Civil
23 Procedure section 382.

24 21. Plaintiffs bring this Class Action on behalf of themselves and a California Class,
25 defined as all individuals were employed by Defendants, or any of them, in California as hourly-paid
26 non-exempt employees (the "CALIFORNIA CLASS") between April 12, 2017, and the date of
27 preliminary approval of this settlement (the "CALIFORNIA CLASS PERIOD"). The amount in
28 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars

1 (\$5,000,000.00). Plaintiffs reserve the right to establish subclasses as appropriate.

2 22. The class is ascertainable and there is a well-defined community of interest in the
3 litigation:

- 4 a. Numerosity: The class members are so numerous that joinder of all class
5 members is impracticable. The membership of the entire class is unknown to
6 Plaintiffs at this time; however, the class is estimated to be greater than fifty
7 (50) individuals and the identity of such membership is readily ascertainable by
8 inspection of Defendants' employment records.
- 9 b. Typicality: Plaintiffs' claims are typical of all other class members' as
10 demonstrated herein. Plaintiffs will fairly and adequately protect the interests of
11 the other class members with whom they have a well-defined community of
12 interest.
- 13 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of each class
14 member, with whom they have a well-defined community of interest and
15 typicality of claims, as demonstrated herein. Plaintiffs have no interest that is
16 antagonistic to the other class members. Plaintiffs' attorneys, the proposed class
17 counsel, are versed in the rules governing class action discovery, certification,
18 and settlement. Plaintiffs have incurred, and during the pendency of this action
19 will continue to incur, costs and attorneys' fees, that have been, are, and will be
20 necessarily expended for the prosecution of this action for the substantial benefit
21 of each class member.
- 22 d. Superiority: A class action is superior to other available methods for the fair and
23 efficient adjudication of this litigation because individual joinder of all class
24 members is impractical.
- 25 e. Public Policy Considerations: Certification of this lawsuit as a class action will
26 advance public policy objectives. Employers of this great state violate
27 employment and labor laws every day. Current employees are often afraid to
28 assert their rights out of fear of direct or indirect retaliation. However, class

1 actions provide the class members who are not named in the complaint
2 anonymity that allows for the vindication of their rights.

3 23. There are common questions of law and fact as to the class members that
4 predominate over questions affecting only individual members. The following common questions of
5 law or fact, among others, exist as to the members of the class:

- 6 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
7 accordance with the California Labor Code, was willful;
- 8 b. Whether Defendants' had a corporate policy and practice of failing to pay their
9 hourly-paid or non-exempt employees within the State of California for all
10 hours worked and missed (short, late, interrupted, and/or missed altogether)
11 meal periods and rest breaks in violation of California law;
- 12 c. Whether Defendants required Plaintiffs and the other class members to work
13 over eight (8) hours per day and/or over forty (40) hours per week and failed to
14 pay the legally required overtime compensation to Plaintiffs and the other class
15 members;
- 16 d. Whether Defendants deprived Plaintiffs and the other class members of meal
17 and/or rest periods or required Plaintiffs and the other class members to work
18 during meal and/or rest periods without compensation;
- 19 e. Whether Defendants failed to pay minimum wages to Plaintiffs and the other
20 class members for all hours worked;
- 21 f. Whether Defendants failed to pay all wages due to Plaintiffs and the other class
22 members within the required time upon their discharge or resignation;
- 23 g. Whether Defendants failed to timely pay all wages due to Plaintiffs and the
24 other class members during their employment;
- 25 h. Whether Defendants complied with wage reporting as required by the California
26 Labor Code; including, *inter alia*, section 226;
- 27 i. Whether Defendants kept complete and accurate payroll records as required by
28 the California Labor Code, including, *inter alia*, section 1174(d);

- 1 j. Whether Defendants failed to reimburse Plaintiffs and the other class members
- 2 for necessary business-related expenses and costs;
- 3 k. Whether Defendants' conduct was willful or reckless;
- 4 l. Whether Defendants engaged in unfair business practices in violation of
- 5 California Business & Professions Code section 17200, et seq.;
- 6 m. The appropriate amount of damages, restitution, and/or monetary penalties
- 7 resulting from Defendants' violation of California law; and
- 8 n. Whether Plaintiffs and the other class members are entitled to compensatory
- 9 damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

11 24. At all relevant times set forth herein, Defendants employed Plaintiffs and other persons
12 as hourly-paid or non-exempt employees within the State of California, including the County of
13 Sacramento.

14 25. Defendants, jointly and severally, employed Plaintiff LOZANO as an hourly-paid, non-
15 exempt employee, from approximately September 2019 to approximately December 2020, in the State of
16 California.

17 26. Defendants, jointly and severally, employed Plaintiff CABRERA as an hourly-paid, non-
18 exempt employee, from approximately April 2020 to approximately December 2020, in the State of
19 California.

20 27. Defendants, jointly and severally, employed Plaintiff MENDOZA as an hourly-paid, non-
21 exempt employee, from approximately June 2020 to approximately December 2020, in the State of
22 California.

23 28. Defendants, jointly and severally, employed Plaintiff FERNANDEZ as an hourly-paid,
24 non-exempt employee, from approximately August 2019 to approximately December 2020, in the State
25 of California.

26 29. Defendants, jointly and severally, employed Plaintiff NIETO as an hourly-paid, non-
27 exempt employee, from approximately August 2019 to approximately December 2020, in the State of
28 California.

1 30. Defendants, jointly and severally, employed Plaintiff HERNANDEZ as an hourly-paid,
2 non-exempt employee, from approximately February 2020 to approximately December 2020, in the State
3 of California.

4 31. Defendants, jointly and severally, employed Plaintiff WILLIAMS as an hour-paid, non-
5 exempt employee, from approximately May of 2021 until July 1, 2021. Defendants hired Plaintiffs and
6 the other class members, classified them as hourly-paid or non-exempt employees, and failed to
7 compensate them for all hours worked and missed meal periods and/or rest breaks.

8 32. Defendants had the authority to hire and terminate Plaintiffs and the other class
9 members, to set work rules and conditions governing Plaintiffs' and the other class members'
10 employment, and to supervise their daily employment activities.

11 33. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs'
12 and the other class members' employment for them to be joint employers of Plaintiffs and the other
13 class members.

14 34. Defendants directly hired and paid wages and benefits to Plaintiffs and the other class
15 members.

16 35. Defendants continue to employ hourly-paid or non-exempt employees within the State
17 of
18 California.

19 36. Plaintiffs and the other class members worked over eight (8) hours in a day, and/or
20 forty (40) hours in a week during their employment with Defendants.

21 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged
22 in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the
23 State of California. This pattern and practice involved, *inter alia*, failing to pay them for all regular
24 and/or overtime wages earned and for missed meal periods and rest breaks in violation of California
25 law.

26 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
27 should have known that Plaintiffs and the other class members were entitled to receive certain wages
28 for overtime compensation and that they were not receiving accurate overtime compensation for all

1 overtime hours worked.

2 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to
3 provide Plaintiffs and the other class members all required rest and meal periods during the relevant
4 time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled
5 to any and all applicable penalties.

6 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
7 should have known that Plaintiffs and the other class members were entitled to receive all meal periods
8 or payment of one additional hour of pay at Plaintiffs' and the other class member's regular rate of pay
9 when a meal period was missed, and they did not receive all meal periods or payment of one additional
10 hour of pay at Plaintiffs' and the other class member's regular rate of pay when a meal period was
11 missed.

12 41. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
13 should have known that Plaintiffs and the other class members were entitled to receive all rest periods
14 or payment of one additional hour of pay at Plaintiffs' and the other class member's regular rate of pay
15 when a rest period was missed, and they did not receive all rest periods or payment of one additional
16 hour of pay at Plaintiffs' and the other class members' regular rate of pay when a rest period was missed.

17 42. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
18 should have known that Plaintiffs and the other class members were entitled to receive at least minimum
19 wages for compensation and that they were not receiving at least minimum wages for all hours worked.

20 43. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
21 should have known that Plaintiffs and the other class members were entitled to receive all wages owed
22 to them upon discharge or resignation, including overtime and minimum wages and meal and rest period
23 premiums, and they did not, in fact, receive all such wages owed to them at the time of their discharge
24 or resignation.

25 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
26 should have known that Plaintiffs and the other class members were entitled to receive all wages owed
27 to them during their employment. Plaintiffs and the other class members did not receive payment of all
28 wages, including overtime and minimum wages and meal and rest period premiums, within any time

1 permissible under California Labor Code section 204.

2 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
3 should have known that Plaintiffs and the other class members were entitled to receive complete and
4 accurate wage statements in accordance with California law, but, in fact, they did not receive complete
5 and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to
6 include the total number of hours worked by Plaintiffs and the other class members.

7 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
8 should have known that Defendants had to keep complete and accurate payroll records for Plaintiffs and
9 the other class members in accordance with California law, but, in fact, did not keep complete and
10 accurate payroll records.

11 47. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
12 should have known that Plaintiffs and the other class members were entitled to reimbursement for
13 necessary business-related expenses.

14 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
15 should have known that they had a duty to compensate Plaintiffs and the other class members pursuant
16 to California law, and that Defendants had the financial ability to pay such compensation, but willfully,
17 knowingly, and intentionally failed to do so, and falsely represented to Plaintiffs and the other class
18 members that they were properly denied wages, all in order to increase Defendants' profits.

19 49. During the relevant time period, Defendants failed to pay overtime wages to Plaintiffs
20 and the other class members for all overtime hours worked. Plaintiffs and the other class members were
21 required to work more than eight (8) hours per day and/or forty (40) hours per week without overtime
22 compensation for all overtime hours worked.

23 50. During the relevant time period, Defendants failed to provide all requisite uninterrupted
24 meal and rest periods to Plaintiffs and the other class members.

25 51. During the relevant time period, Defendants failed to pay Plaintiffs and the other class
26 members at least minimum wages for all hours worked.

27 52. During the relevant time period, Defendants failed to pay Plaintiffs and the other class
28 members all wages owed to them upon discharge or resignation.

53. During the relevant time period, Defendants failed to pay Plaintiffs and the other class members all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204.

54. During the relevant time period, Defendants failed to provide complete or accurate wage statements to Plaintiffs and the other class members.

55. During the relevant time period, Defendants failed to keep complete or accurate payroll records for Plaintiffs and the other class members.

56. During the relevant time period, Defendants failed to reimburse Plaintiffs and the other class members for all necessary business-related expenses and costs.

57. During the relevant time period, Defendants failed to properly compensate Plaintiffs and the other class members pursuant to California law in order to increase Defendants' profits.

58. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)

59. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 62, and each and every part thereof with the same force and effect as though fully set forth herein.

60. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and the other class members employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a

1 workweek.

2 62. The applicable IWC Wage Order further provides that Defendants are and
3 were required to pay Plaintiffs and the other class members overtime compensation at a rate of two
4 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

5 63. California Labor Code section 510 codifies the right to overtime compensation at
6 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
7 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
8 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours
9 in a day or in excess of eight (8) hours in a day on the seventh day of work.

10 64. During the relevant time period, Plaintiffs and the other class members worked in
11 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

12 65. During the relevant time period, Defendants intentionally and willfully failed to pay
13 overtime wages owed to Plaintiffs and the other class members.

14 66. Defendants' failure to pay Plaintiffs and the other class members the unpaid balance of
15 overtime compensation, as required by California laws, violates the provisions of California Labor Code
16 sections 510 and 1198, and is therefore unlawful.

17 67. Pursuant to California Labor Code section 1194, Plaintiffs and the other
18 class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
19 attorneys' fees.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of California Labor Code §§ 226.7 and 512(a))**

22 **(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS
23 CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)**

24 68. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
25 71, and each and every part thereof with the same force and effect as though fully set forth herein.

26 69. At all relevant times, the IWC Order and California Labor Code sections 226.7 and
27 512(a) were applicable to Plaintiffs' and the other class members' employment by Defendants.

28 70. At all relevant times, California Labor Code section 226.7 provides that no employer

1 shall require an employee to work during any meal or rest period mandated by an applicable order of
2 the California IWC.

3 71. At all relevant times, the applicable IWC Wage Order and California Labor Code
4 section 512(a) provide that an employer may not require, cause or permit an employee to work for a
5 work period of more than five (5) hours per day without providing the employee with a meal period of
6 not less than thirty (30) minutes, except that if the total work period per day of the employee is no more
7 than six (6) hours, the meal period may be waived by mutual consent of both the employer and
8 employee.

9 72. At all relevant times, the applicable IWC Wage Order and California Labor Code
10 section 512(a) further provide that an employer may not require, cause or permit an employee to work
11 for a work period of more than ten (10) hours per day without providing the employee with a second
12 uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is
13 no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
14 employer and the employee only if the first meal period was not waived.

15 73. During the relevant time period, Plaintiffs and the other class members who were
16 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally
17 mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours
18 without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

19 74. During the relevant time period, Plaintiffs and the other class members who were
20 scheduled to work for a period of time in excess of six (6) hours were required to work for periods
21 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes
22 and/or rest period.

23 75. During the relevant time period, Defendants intentionally and willfully required
24 Plaintiffs and the other class members to work during meal periods and failed to compensate Plaintiffs
25 and the other class members the full meal period premium for work performed during meal periods.

26 76. During the relevant time period, Defendants failed to pay Plaintiffs and the
27 other class members the full meal period premium due pursuant to California Labor Code section 226.7.

28 77. Defendants' conduct violates applicable IWC Wage Order and California Labor Code

1 sections 226.7 and 512(a).

2 78. Pursuant to applicable IWC Wage Order and California Labor Code section
3 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one additional
4 hour of pay at the employee's regular rate of compensation for each work day that the meal or rest
5 period is not provided.

6 **THIRD CAUSE OF ACTION**

7 **(Violation of California Labor Code § 226.7)**

8 **(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS
9 CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)**

10 79. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
11 through 82, and each and every part thereof with the same force and effect as though fully set forth
12 herein.

13 80. At all times herein set forth, the applicable IWC Wage Order and California Labor
14 Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by
15 Defendants.

16 81. At all relevant times, California Labor Code section 226.7 provides that no employer
17 shall require an employee to work during any rest period mandated by an applicable order of the
18 California IWC.

19 82. At all relevant times, the applicable IWC Wage Order provides that "[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall
21 be in the middle of each work period" and that the "rest period time shall be based on the total hours
22 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof"
23 unless the total daily work time is less than three and one-half (3 1/2) hours.

24 83. During the relevant time period, Defendants required Plaintiffs and other class
25 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period
26 per each four (4) hour period worked.

27 84. During the relevant time period, Defendants willfully required Plaintiffs
28 and the other class members to work during rest periods and failed to pay Plaintiffs and the other class

1 members the full rest period premium for work performed during rest periods.

2 85. During the relevant time period, Defendants failed to pay Plaintiffs and the
3 other class members the full rest period premium due pursuant to California Labor Code section 226.7

4 86. Defendants' conduct violates applicable IWC Wage Orders and California
5 Labor Code section 226.7.

6 87. Pursuant to the applicable IWC Wage Orders and California Labor Code section
7 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one additional
8 hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period
9 was not provided.

10 **FOURTH CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

12 **(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS
13 CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)**

14 88. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 91, and each and every part thereof with the same force and effect as though fully set forth
16 herein.

17 89. At all relevant times, California Labor Code sections 1194, 1197, and
18 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than
19 the minimum so fixed is unlawful.

20 90. During the relevant time period, Defendants failed to pay minimum wage
21 to Plaintiffs and the other class members as required, pursuant to California Labor Code sections 1194,
22 1197, and 1197.1.

23 91. Defendants' failure to pay Plaintiffs and the other class members the
24 minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant
25 to those sections Plaintiffs and the other class members are entitled to recover the unpaid balance of
26 their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages
27 in an amount equal to the wages unlawfully unpaid and interest thereon.

28 92. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other

1 class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
2 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum
3 wages.

4 93. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other
5 class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
6 unpaid and interest thereon.

7 **FIFTH CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 201, 202 and 203)**

9 **(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS
10 CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)**

11 94. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
12 through 97, and each and every part thereof with the same force and effect as though fully set forth
13 herein.

14 95. At all relevant times herein set forth, California Labor Code sections 201
15 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time
16 of discharge are due and payable immediately, and if an employee quits his or her employment, his or
17 her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the
18 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
19 employee is entitled to his or her wages at the time of quitting.

20 96. During the relevant time period, Defendants intentionally and willfully failed to pay
21 Plaintiffs and the other class members who are no longer employed by Defendants their wages, earned
22 and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

23 97. Defendants' failure to pay Plaintiffs and the other class members who are
24 no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72)
25 hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and
26 202.

27 98. California Labor Code section 203 provides that if an employer willfully fails to pay
28 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue

1 as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but
2 the wages shall not continue for more than thirty (30) days.

3 99. Plaintiffs and the other class members are entitled to recover from Defendants the
4 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to
5 California Labor Code section 203.

6 **SIXTH CAUSE OF ACTION**

7 **(Violation of California Labor Code § 204)**

8 **(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS
9 CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)**

10 100. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
11 through 103, and each and every part thereof with the same force and effect as though fully set forth
12 herein.

13 101. At all times herein set forth, California Labor Code section 204 provides that all
14 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
15 calendar month, other than those wages due upon termination of an employee, are due and payable
16 between the 16th and the 26th day of the month during which the labor was performed.

17 102. At all times herein set forth, California Labor Code section 204 provides that all
18 wages earned by any person in any employment between the 16th and the last day, inclusive, of any
19 calendar month, other than those wages due upon termination of an employee, are due and payable
20 between the 1st and the 10th day of the following month.

21 103. At all times herein set forth, California Labor Code section 204 provides that all
22 wages earned for labor in excess of the normal work period shall be paid no later than the payday for
23 the next regular payroll period.

24 104. During the relevant time period, Defendants intentionally and willfully failed to pay
25 Plaintiffs and the other class members all wages due to them, within any time period permissible under
26 California Labor Code section 204.

27 105. Plaintiffs and the other class members are entitled to recover all remedies available
28 for violations of California Labor Code section 204.

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SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)

8 106. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
9 through 109, and each and every part thereof with the same force and effect as though fully set forth
10 herein.

11 107. At all material times set forth herein, California Labor Code section 226(a)
12 provides that every employer shall furnish each of his or her employees an accurate itemized statement
13 in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4)
15 all deductions, provided that all deductions made on written orders of the employee may be aggregated
16 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee
17 is paid, (7) the name of the employee and his or her social security number, (8) the name and address of
18 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
19 and the corresponding number of hours worked at each hourly rate by the employee. The deductions
20 made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing
21 the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file
22 by the employer for at least three years at the place of employment or at a central location within the
23 State of California.

24 108. Defendants have intentionally and willfully failed to provide Plaintiffs and
25 the other class members with complete and accurate wage statements. The deficiencies include but are
26 not limited to: the failure to include the total number of hours worked by Plaintiffs and the other class
27 members.

28 109. As a result of Defendants' violation of California Labor Code section

1 226(a), Plaintiffs and the other class members have suffered injury and damage to their statutorily
2 protected rights.

3 110. More specifically, Plaintiffs and the other class members have been injured
4 by Defendants' intentional and willful violation of California Labor Code section 226(a) because they
5 were denied both their legal right to receive, and their protected interest in receiving, accurate and
6 itemized wage statements pursuant to California Labor Code section 226(a).

7 111. Plaintiffs and the other class members are entitled to recover from
8 Defendants the greater of their actual damages caused by Defendants' failure to comply with California
9 Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

10 112. Plaintiffs and the other class members are also entitled to injunctive relief
11 to ensure compliance with this section, pursuant to California Labor Code section 226(h).

12 **EIGHTH CAUSE OF ACTION**

13 **(Violation of California Labor Code § 1174(d))**

14 **(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS
15 CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)**

16 113. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
17 116, and each and every part thereof with the same force and effect as though fully set forth herein.

18 114. Pursuant to California Labor Code section 1174(d), an employer shall keep at a central
19 location in the state or at the plants or establishments at which employees are employed, payroll records
20 showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by
21 and any applicable piece rate paid to, employees employed at the respective plants or establishments.
22 These records shall be kept in accordance with rules established for this purpose by the commission,
23 but in any case shall be kept on file for not less than two years.

24 115. Defendants have intentionally and willfully failed to keep accurate and complete
25 payroll records showing the hours worked daily and the wages paid to Plaintiffs and the other class
26 members.

27 116. As a result of Defendants' violation of California Labor Code section 1174(d),
28 Plaintiffs and the other class members have suffered injury and damage to their statutorily protected

1 rights.

2 117. More specifically, Plaintiffs and the other class members have been injured
3 by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they
4 were denied both their legal right and protected interest, in having available, accurate and complete
5 payroll records pursuant to California Labor Code section 1174(d).

6 **NINTH CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 2800 and 2802)**

8 **(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS
9 CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)**

10 118. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
11 through 121, and each and every part thereof with the same force and effect as though fully set forth
12 herein.

13 119. Pursuant to California Labor Code sections 2800 and 2802, an employer
14 must reimburse its employee for all necessary expenditures incurred by the employee in direct
15 consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to
16 the directions of the employer.

17 120. Plaintiffs and the other class members incurred necessary business-related
18 expenses and costs that were not fully reimbursed by Defendants.

19 121. Defendants have intentionally and willfully failed to reimburse Plaintiffs
20 and the other class members for all necessary business-related expenses and costs.

21 122. Plaintiffs and the other class members are entitled to recover from
22 Defendants their business-related expenses and costs incurred during the course and scope of their
23 employment, plus interest accrued from the date on which the employee incurred the necessary
24 expenditures at the same rate as judgments in civil actions in the State of California.

25 **TENTH CAUSE OF ACTION**

26 **For Failure to Pay Wages By Instrument Payable On Demand And Without Discount**

27 **[Cal. Lab. Code §§ 212]**

28 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

1 123. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,
2 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 124. California Labor Code Section 212 requires DEFENDANT to pay PLAINTIFFS and
5 CALIFORNIA LABOR SUB-CLASS Members with instruments that are negotiable and payable in cash,
6 on demand, without discount, at some established place of business in the state, the name and address of
7 which must appear on the instrument.

8 125. DEFENDANT issued wages to PLAINTIFFS, and CALIFORNIA CLASS Members,
9 by way of a pay card upon termination. This form of payment required PLAINTIFFS, and the other
10 CALIFORNIA CLASS Members, to incur a fee when attempting to obtain all of their wages on demand,
11 no alternative was offered which enabled them to avoid a charge, and no address in California was set
12 forth on the paycard where all of the funds deposited thereon could be made available without charge.
13 Because DEFENDANT offered no method by which PLAINTIFFS, and the other CALIFORNIA CLASS
14 Members, could receive all the wages from their paycard on demand, without paying any fee, it is alleged
15 that this practice violates Labor Code §§ 212, requiring that wages be payable on demand, without
16 discount. Labor Code §§ 225.5 provides penalties resulting from Labor Code §§ 212 violations. As a result
17 of DEFENDANT'S failure to pay PLAINTIFFS, and the other CALIFORNIA CLASS Members, their
18 wages by an instrument payable on demand, without discount, in violation of Labor Code §§ 212,
19 PLAINTIFFS, and the other CALIFORNIA CLASS Members, have suffered injury to the extent they
20 paid ATM fees or other fees and could not cash the entirety of their paycheck at once, thus denying them
21 access to their wages.

22 **ELEVENTH CAUSE OF ACTION**

23 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

24 **(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS
25 CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)**

26 126. Plaintiffs incorporates by reference the allegations contained in paragraphs
27 1 through 126, and each and every part thereof with the same force and effect as though fully set forth
28 herein.

1 127. Defendants' conduct, as alleged herein, has been, and continues to be,
2 unfair, unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
3 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest within
4 the meaning of Code of Civil Procedure section 1021.5.

5 128. Defendants' activities as alleged herein are violations of California law,
6 and constitute unlawful business acts and practices in violation of California Business & Professions
7 Code section 17200, et seq.

8 129. A violation of California Business & Professions Code section 17200, et seq. may be
9 predicated on the violation of any state or federal law. In this instant case, Defendants' policies and
10 practices of requiring employees, including Plaintiffs and the other class members, to work overtime
11 without paying them proper compensation violate California Labor Code sections 510 and 1198.
12 Additionally, Defendants' policies and practices of requiring employees, including Plaintiffs and the
13 other class members, to work through their meal and rest periods without paying them proper
14 compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and
15 practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and
16 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiffs and
17 the other class members violate California Labor Code sections 201, 202, 203 and 204. Defendants also
18 violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

19 130. As a result of the herein described violations of California law, Defendants
20 unlawfully gained an unfair advantage over other businesses.

21 131. Plaintiffs and the other class members have been personally injured by
22 Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited
23 to the loss of money and/or property.

24 132. Pursuant to California Business & Professions Code sections 17200, et
25 seq., Plaintiffs and the other class members are entitled to restitution of the wages withheld and retained
26 by Defendants during a period that commences four years preceding the filing of this Complaint; an
27 award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other
28 applicable laws; and an award of costs.

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TWELFTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, et seq.)

(Against CORNERSTONE BUILDING BRANDS, INC., PLY GEM PACIFIC WINDOWS CORPORATION, SIMONTON WINDOWS & DOORS, INC., and DOES 1 through 100)

133. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 133, and each and every part thereof with the same force and effect as though fully set forth herein.

134. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

135. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

136. Plaintiffs, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who were employed by Defendants, or any of them, in California as hourly-paid non-exempt employees (“AGGRIEVED EMPLOYEES”) between April 5, 2020 and the date of preliminary approval of this settlement (the “PAGA PERIOD”).

137. On April 5, 2021, Plaintiff LOZANO, MENDOZA, FERNANDEZ, and NIETO provided written notice by online submission to the LWDA and by U.S. Certified Mail to Defendants CORNERSTONE BUILDING BRANDS, PLY GEM WINDOWS, PLY GEM PACIFIC WINDOWS CORPORATION, PLY GEM RESIDENTIAL SOLUTIONS, and SIMONTON DOORS & WINDOWS of the specific provisions of the California Labor Code alleged to have been violated, including the facts

1 and theories to support the alleged violations.

2 138. On April 6, 2021, Plaintiffs CABRERA and HERNANDEZ provided written notice
3 by online submission to the LWDA and by U.S. Certified Mail to Defendants CORNERSTONE
4 BUILDING BRANDS, PLY GEM WINDOWS, PLY GEM PACIFIC WINDOWS CORPORATION,
5 PLY GEM RESIDENTIAL SOLUTIONS, and SIMONTON DOORS & WINDOWS of the specific
6 provisions of the California Labor Code alleged to have been violated, including the facts and theories to
7 support the alleged violations.

8 139. On September 16, 2021, Plaintiff WILLIAMS provided written notice by online
9 submission to the LWDA and by U.S. Certified Mail to Defendant PLY GEM PACIFIC WINDOWS
10 CORPORATION, of the specific provisions of the California Labor Code alleged to have been violated,
11 including the facts and theories to support the alleged violations.

12 140. Plaintiffs have not received an LWDA Notice within sixty-five (65) calendar days of
13 the date of Plaintiffs' notices.

14 141. Therefore, Plaintiffs have satisfied the administrative prerequisites under California
15 Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies,
16 for violations of California Labor Code sections 201, 202, 203, 204, 210, 212, 221, 226(a), 226.7, 227.3,
17 351, 510, 512(a), 558(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and California Code of
18 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B).

19 142. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
20 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the
21 PAGA PERIOD, Plaintiffs seek penalties for those violations that affected the AGGRIEVED
22 EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018).

23 **Failure to Pay Overtime**

24 143. Defendants' failure to pay legally required overtime wages to Plaintiffs and the other
25 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
26 prohibited by California Labor Code sections 510 and 1198.

27 **Failure to Provide Meal Periods**

28 144. Defendants' failure to provide legally required meal periods to Plaintiffs and the other

1 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
2 prohibited by California Labor Code sections 226.7 and 512(a).

3 / / /

4 **Failure to Provide Rest Periods**

5 145. Defendants' failure to provide legally required rest periods to Plaintiffs and the other
6 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
7 prohibited by California Labor Code section 226.7.

8 **Failure to Pay Minimum Wages**

9 146. Defendants' failure to pay legally required minimum wages to Plaintiffs and the other
10 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
11 prohibited by California Labor Code sections 1194, 1197 and 1197.1.

12 **Failure to Timely Pay Wages Upon Termination**

13 147. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved
14 employees upon termination in accordance with Labor Code sections 201, 202, and 203 constitutes
15 unlawful and/or unfair activity prohibited by California Labor Code sections 201, 202, and 203.

16 **Failure to Timely Pay Wages During Employment**

17 148. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved
18 employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or
19 unfair activity prohibited by California Labor Code section 204.

20 **Failure to Provide Complete and Accurate Wage Statements**

21 149. Defendants' failure to provide complete and accurate wage statements to Plaintiffs
22 and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful
23 and/or unfair activity prohibited by California Labor Code section 226(a).

24 **Failure to Keep Complete and Accurate Payroll Records**

25 150. Defendants' failure to keep complete and accurate payroll records relating to
26 Plaintiffs and the other aggrieved employees in accordance with California Labor Code section 1174(d)
27 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

28 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

1 151. Defendants' failure to reimburse Plaintiffs and the other aggrieved employees for necessary
2 business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802
3 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

4 152. Pursuant to California Labor Code section 2699, Plaintiffs, individually, and on behalf of
5 all aggrieved employees, request and are entitled to recover from Defendants and each of them, attorneys'
6 fees and costs pursuant to California Labor Code section 218.5, as well as all penalties pursuant to PAGA
7 against Defendants, and each of them, including but not limited to:

- 8 a. Penalties under California Labor Code section 2699 in the amount of a hundred
9 dollars (\$100) for each aggrieved employee per pay period for the initial violation,
10 and two hundred dollars (\$200) for each aggrieved employee per pay period for
11 each subsequent violation;
- 12 b. Penalties under California Code of Regulations Title 8 section 11010 et seq. in the
13 amount of fifty dollars (\$50) for each aggrieved employee per pay period for the
14 initial violation, and one hundred dollars (\$100) for each aggrieved employee per
15 pay period for each subsequent violation;
- 16 c. Penalties under California Labor Code section 210 in addition to, and entirely
17 independent and apart from, any other penalty provided in the California Labor
18 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per
19 pay period for the initial violation, and two hundred dollars (\$200) for each
20 aggrieved employee per pay period for each subsequent violation; and
- 21 d. Any and all additional penalties and sums as provided by the California Labor Code
22 and/or other statutes.

23 153. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
24 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
25 Workforce Development Agency for the enforcement of labor laws and education of employers and
26 employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved
27 employees.

28 154. Further, Plaintiffs are entitled to seek and recover reasonable attorneys' fees and

1 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.
2

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs, individually, and on behalf of other members of the general public similarly situated,
5 request a trial by jury.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs, individually, and on behalf of other members of the general public
8 similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

9 **Class Certification**

10 1. That this action be certified as a class action;
11 2. That Plaintiffs be appointed as the representatives of the Class;
12 3. That counsel for Plaintiffs be appointed as Class Counsel; and
13 4. That Defendants provide to Class Counsel immediately the names and most current/last
14 known contact information (address, e-mail and telephone numbers) of all class members.

15 **As to the First Cause of Action**

16 5. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
18 overtime wages due to Plaintiffs and the other class members;

19 6. For general unpaid wages at overtime wage rates and such general and special damages as
20 may be appropriate;

21 7. For pre-judgment interest on any unpaid overtime compensation commencing from the
22 date such amounts were due;

23 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor
24 Code section 1194; and

25 9. For such other and further relief as the Court may deem just and proper.

26 **As to the Second Cause of Action**

27 10. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all

1 meal periods (including second meal periods) to Plaintiffs and the other class members;

2 11. That the Court make an award to Plaintiffs and the other class members of one (1) hour of
3 pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

4 12. For all actual, consequential, and incidental losses and damages, according to proof;

5 13. For premium wages pursuant to California Labor Code section 226.7(c);

6 14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

7 15. For reasonable attorneys' fees and costs of suit incurred herein; and

8 16. For such other and further relief as the Court may deem just and proper.

9 **As to the Third Cause of Action**

10 17. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods
12 to Plaintiffs and the other class members;

13 18. That the Court make an award to Plaintiffs and the other class members of one (1)
14 hour of pay at each employee's regular rate of compensation for each workday that a rest period was not
15 provided;

16 19. For all actual, consequential, and incidental losses and damages, according to proof;

17 20. For premium wages pursuant to California Labor Code section 226.7(c);

18 21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

19 22. For such other and further relief as the Court may deem just and proper.

20 **As to the Fourth Cause of Action**

21 23. That the Court declare, adjudge and decree that Defendants violated California Labor Code
22 sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiffs and the other
23 class members;

24 24. For general unpaid wages and such general and special damages as may be appropriate;

25 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiffs
26 and the other class members in the amount as may be established according to proof at trial;

27 26. For pre-judgment interest on any unpaid compensation from the date such amounts were
28 due;

1 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor
2 Code section 1194(a);

3 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

4 29. For such other and further relief as the Court may deem just and proper.

5 **As to the Fifth Cause of Action**

6 30. **That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time
8 of termination of the employment of Plaintiffs and the other class members no longer employed by
9 Defendants;**

10 31. For all actual, consequential, and incidental losses and damages, according to proof;

11 32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiffs
12 and the other class members who have left Defendants' employ;

13 33. For pre-judgment interest on any unpaid compensation from the date such amounts were
14 due; and

15 34. For such other and further relief as the Court may deem just and proper.

16 **As to the Sixth Cause of Action**

17 35. That the Court declare, adjudge and decree that Defendants violated California Labor Code
18 section 204 by willfully failing to pay all compensation owed at the time required by California Labor
19 Code section 204 to Plaintiffs and the other class members;

20 36. For all actual, consequential, and incidental losses and damages, according to proof;

21 37. For pre-judgment interest on any unpaid compensation from the date such amounts were
22 due; and

23 38. For such other and further relief as the Court may deem just and proper.

24 **As to the Seventh Cause of Action**

25 39. That the Court declare, adjudge and decree that Defendants violated the record
26 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to
27 Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage statements
28 thereto;

- 1 40. For actual, consequential and incidental losses and damages, according to proof;
- 2 41. For statutory penalties pursuant to California Labor Code section 226(e);
- 3 42. For injunctive relief to ensure compliance with this section, pursuant to California Labor
- 4 Code section 226(h); and
- 5 43. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

- 7 44. That the Court declare, adjudge and decree that Defendants violated California
- 8 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for
- 9 Plaintiffs and the other class members as required by California Labor Code section 1174(d);
- 10 45. For actual, consequential and incidental losses and damages, according to proof;
- 11 46. For statutory penalties pursuant to California Labor Code section 1174.5; and
- 12 47. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

- 14 48. That the Court declare, adjudge and decree that Defendants violated California
- 15 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class members
- 16 for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;
- 17 49. For actual, consequential and incidental losses and damages, according to proof;
- 18 50. For the imposition of civil penalties and/or statutory penalties;
- 19 51. For reasonable attorneys' fees and costs of suit incurred herein; and
- 20 52. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

- 22 53. That the Court declare, adjudge and decree that Defendants violated California Labor Code
- 23 section 212 by willfully failing to pay Plaintiff and the other class member their wages by
- 24 an instrument payable on demand, without discount;
- 25 54. For actual, consequential and incidental losses and damages, according to proof;
- 26 55. For the imposition of civil penalties and/or statutory penalties;
- 27 56. For reasonable attorneys' fees and costs of suit incurred herein; and
- 28 57. For such other and further relief as the Court may deem just and proper.

As to the Eleventh Cause of Action

58. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and the other class members, failing to pay Plaintiffs' and the other class members' wages timely as required by California Labor Code section 201, 202, 203 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

59. For restitution of unpaid wages to Plaintiffs and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

60. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, et seq.;

61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

62. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

63. For such other and further relief as the Court may deem just and proper.

As to the Twelfth Cause of Action

64. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and (g), costs/expenses, and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 210, 212, 221, 226(a), 226.7, 227.3, 351, 510, 512(a), 558(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

65. For such other and further relief as the Court may deem equitable and appropriate.

Dated: May , 2024

LAWYERS *for* JUSTICE, PC

By: _____
Edwin Ajwazian

1
2 Dated: May ____, 2024
3
4

Attorneys for Plaintiffs

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

5 By _____
6 Nicholas J. De Blouw
Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE [F.R.C.P. §5]

I am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037.

On May 21, 2024, I served the document(s) described as below in the manner set forth below:

**1. JOINT STIPULATION AND [PROPOSED] ORDER FOR LEAVE TO FILE
PLAINTIFFS' FIRST AMENDED CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

XX (BY ELECTRONIC SERVICE): I caused the listed documents to be electronically filed through the CM/ECF system at the United States District Court for the Eastern District of California which generates a Notice of Electronic Filing to all parties and constitutes service of the electronically filed documents on all parties for purposes of the Federal Rules of Civil Procedure.

XX (Federal): I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the foregoing is true and correct under penalty of perjury.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 21, 2024, at San Diego, California.

/s/ Jeffrey S. Herman
Jeffrey S. Herman